IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1993 OF 2005
in
CRIMINAL WRIT PETITION NO.564 OF 2005

Shri Nasir Husain Noor. .. .. Applicant (Detenu)

Vs.

Shri A.N.Roy,
Commissioner of Police, Mumbai,
and Others. .. .. Respondents

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Shri U.N.Tripathi for the Applicant.

Shri D.S.Mhaispurkar, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 23rd March, 2005.

P.C.

1. Heard. By the present application, the applicant is seeking order for his temporary release from the preventive detention so as to enable him to attend his brother’s marriage scheduled to take place on 25th March, 2005 at Noor Masjid, Trombay, Mumbai. The application is objected to on behalf of the respondents. Considering the antecedents of the applicant-detenu, it may not be possible to have

proper arrangement to enable the applicant to attend the said marriage. Though the applicant seeks for temporary release for two days, the learned Advocate for the applicant has submitted that the applicant would be satisfied if he is allowed to leave the jail premises around 9.00 a.m. and to return to the jail premises at 6.00 p.m. on 25th March, 2005.

2. Considering the fact that the marriage ceremony of the brother of the applicant is scheduled to take place within the premises of Masjid, the learned APP has submitted that it may be virtually impossible for the police to provide appropriate escort to the applicant-detenu within the said Masjid premises. Apart from the fact that the presence of the police in the Masjid premises for marriage ceremony may invite unhappy situation, it may be difficult for the concerned authority to have proper check as well as control over the law and order problem which consequently may arise and that itself would justify rejection of the request made by the applicant. The learned Advocate appearing for the applicant, on the other hand, has submitted that such requests were earlier granted by this Court. There is no need for the applicant’s case to be made an exception to such practice.

3. The question of grant of leave to the detenu for attending the marriage of his brother is not settled by any practice as such. Undoubtedly, there may be cases where such leave might have been granted in the past, depending upon the facts and circumstances of those cases. Each such order has to be passed depending upon the facts and circumstances of each case. In the case in hand, already one challenge to the order of detention by the applicant has failed. Undoubtedly, the 2nd petition filed by the applicant is yet to be considered on merits.

4. The detention of the applicant is under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. The application made by the applicant to the Government authorities for temporary release to attend his brother’s marriage has been rejected on 19th March, 2005. Hence, present application has been filed.

5. Considering the difficulties expressed by the respondents in providing necessary escort for the detenu, within the premises of Masjid at Trombay, Mumbai, for attending his brother’s marriage, and

taking into consideration the antecedents of the applicant, as revealed from the records as they stand today, we do not find any justification for interference in the order passed by the concerned authority rejecting the application of the applicant for temporary release for attending the marriage ceremony of his brother nor we find any justification to accede to the request of the applicant through his Advocate for his release even for one day i.e. 25th March, 2005. It is also to be noted that considering the fact that the place which the applicant seeks to visit for attending the marriage of his brother being a religious place, the respondents' contention about the difficulty in providing appropriate escort all throughout to the applicant during the marriage ceremony inside the Masjid premises is certainly of great substance, and therefore, we find it appropriate not to accede to the said request by the applicant, and hence the application is rejected.

(R.M.S.KHADEPARKAR, J)

(P.V.KAKADE, J)